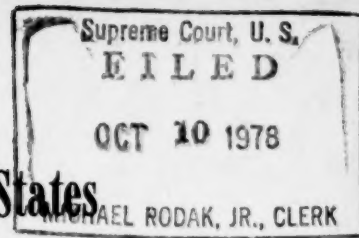


IN THE
Supreme Court of the United States



October Term, 1978
No. 78-110

SHEARN MOODY, JR.,

Petitioner,

vs.

STATE OF ALABAMA, ex rel. CHARLES H. PAYNE, Commissioner of Insurance and Receiver of EMPIRE LIFE INSURANCE COMPANY OF AMERICA, and PROTECTIVE LIFE INSURANCE COMPANY, an Alabama Corporation,

Respondents.

**Petitioner's Reply to Respondents' Brief
in Opposition.**

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Petitioner's Reply to Respondents' Brief in Opposition.

To the Supreme Court of the United States:

Petitioner, SHEARN MOODY, JR., submits this Reply Brief in response to the separate briefs in opposition to his Petition for Writ of Certiorari by respondent CHARLES H. PAYNE and respondent PROTECTIVE LIFE INSURANCE COMPANY.

Preliminary Statement.

It is undisputed by Respondents that the subject civil contempt judgments against Petitioner in the sum of \$233,344.30 are based solely upon Petitioner's participation in a federal Civil Rights action (*Allmon*

case). Respondents have cited in their Briefs numerous companion cases which involved additional fines and jail sentences imposed by the Alabama state court against Petitioner because of his involvement in the *Allmon* Civil Rights case. The only significance of the companion cases cited by Respondents is to demonstrate to this Court the numerous efforts made by Petitioner to exhaust his state court remedies in obtaining a determination that the subject injunction of January 6, 1975 was improper, invalid and beyond the jurisdiction and authority of the Alabama trial court to issue. Having failed in his attempt to void the unlawful state court injunction and to expose the corruption and unlawful practices attendant with the state court receivership proceeding, the Petitioner sought sanctuary in a federal court of the United States. For this he was ordered jailed and penalized by judgments in the case at bench in the amount of nearly a quarter of a million dollars.

Respondents argue that Petitioner failed to raise the *Donovan* principle (*Donovan v. City of Dallas*, 377 U.S. 408) in a timely fashion; and in the alternative, that *Donovan* is not applicable to Petitioner because the *Allmon* case was an action in rem. Such argument is clearly erroneous and is without merit as demonstrated below.

I.

Petitioner Raised the Donovan Issue in the Alabama Trial and Appellate Courts in a Timely Fashion.

Respondent PROTECTIVE LIFE INSURANCE COMPANY OF AMERICA (hereinafter PROTECTIVE) concedes in its Brief that Petitioner initially

attacked the subject injunction in the lower courts by extensively arguing the application of the *Donovan* principle and the federal constitutional principles stated therein (PROTECTIVE Brief in Opposition, at pp. 7-9). Indeed, as cited by PROTECTIVE, the Alabama Supreme Court declared in *Moody v. Alabama ex rel. Payne*, 329 So.2d 73 at page 79:

"Most of Moody's brief and most of his oral argument were devoted to the proposition stated in *Donovan v. City of Dallas*, 377 U.S. 408, 84 S. Ct. 1579, 12 L. Ed. 2d 409 (1964), that 'state courts are completely without power to restrain federal-court proceedings in in personam actions.'" (Protective Brief in Opposition, at pp. 7-8).

After failing in his direct attack against the injunction, Petitioner requested permission of the state court to file a federal in personam action. Permission was denied by the court and Petitioner appealed and sought Mandate by the Alabama Supreme Court. Again, Petitioner argued *Donovan* and the constitutional principles stated therein, but, again, the Alabama Supreme Court rejected his *Donovan* challenge (see *Moody v. Alabama ex rel. Payne*, 351 So.2d 552). The court defined the issues in Petitioner's Mandate action as follows:

"Moody says the issue presented for review is whether an Alabama court may enjoin a party from instituting an action in a federal court asserting a claim under a federal statute. We would state it as whether: under the circumstances of this case; under the Constitutions of the United States and Alabama; and the federal and Alabama law, the trial court had the authority to prohibit

Moody from filing a complaint in federal court?
...

Moody says that under the state and federal constitutions he has an unfettered right to file a suit in federal court because his claim was based upon violation of the federal anti-trust laws. He says his right cannot be abrogated by a state court and cites *Donovan v. Dallas* (cite) in support." (*Ibid.* 351 So.2d 552, at 553-554).

The court further confirmed that it had previously considered Petitioner's *Donovan* argument and declared:

"Donovan was the subject of much discussion in *Moody v. State ex rel. Payne*, supra . . .

We unequivocally held in *Moody* that the Empire receivership was an *in rem* or *quasi in rem* proceeding and the injunction of 6 January 1975 was a proper exercise of the circuit court's power. We adhere to that holding." (*Ibid.*).

Furthermore, Petitioner challenged the trial court's jurisdiction and authority to enter the subject injunction in his initial answers to each of Respondents' complaints (Answers to Petitions, Second Defense). However, Petitioner was precluded from specifically arguing *Donovan* (and the constitutional challenges stated therein) at the trial court level because of a default judgment entered in the PROTECTIVE case shortly after Petitioner filed his Answer.

Petitioner appealed the subject civil contempt judgments, which were consolidated by the Alabama Supreme Court. Petitioner again cited *Donovan* at page 65 of his Brief and Argument of Appellant to the Alabama Supreme Court and argued that a state court cannot enjoin a federal court case.

Petitioner's reference and argument of the *Donovan* principle was not as extensive as in his previously mentioned related and companion cases (cited to this Court by Respondents in their Briefs) because the Alabama Supreme Court was by now very familiar with Petitioner's *Donovan, et al.* challenge and had itself declared that their rejection of *Donovan* was "unequivocal" and that "we adhere to that holding." (*Op. cit.*, 351 So.2d 552 at p. 554).

Respondents' technical assertion that Petitioner has failed to raise the *Donovan* issue timely is simply untrue, and if accepted, would result in unjustly punishing Petitioner in the sum of nearly a quarter of a million dollars solely for exercising his constitutional rights by participation in a federal Civil Rights lawsuit.

II.

Respondents' Argument That the Allmon Civil Rights Action Was an in Rem Action Is Specious and Totally Without Merit.

This Court has declared in *Donovan v. Dallas* (*Op. cit.*) that state courts are without power and authority to enjoin participation in federal *in personam* actions. Respondents cleverly seek to avoid the restraints of *Donovan* by arguing that the *Allmon* civil rights action (*Allmon v. Bookout, et al.*, Civil Action No. 74-377-N, United States District Court for the Middle District of Alabama) was an *in rem* action. Respondents' arguments are specious and the cases cited by them are inapplicable to *in personam* actions.

It is undisputed that the *Allmon* action was filed pursuant to 42 U.S.C. 1981 *et seq.*, and the exclusive jurisdiction granted to the federal courts by 28 U.S.C.

1343. Said action sought *personal liability and money damages* against the defendants.

In addition to the cases and authorities cited by Petitioner in his Petition, 1 *C.J.S.*, Actions, Sec. 52 further clarifies the important distinctions between *in personam* and *in rem* actions:

"Actions in *personam* and actions in *rem* differ in that the former are directed against specific persons and seek personal judgments, while the latter are directed against the thing or property or status of a person and seek judgment with respect thereto as against the world."

The case of *Hutchins v. Pacific Mutual Life Insurance Company*, 20 F.Supp. 50 (S.D. Cal. 1937), affirmed 97 F.2d 58 (9th Cir. 1938), cited by Respondent Payne (Payne Brief, at p. 12) is clearly distinguishable from the *Allmon* case, in that the federal action in *Hutchins* specifically sought the reconveyance of the assets of a state court proceeding. However, in the *Allmon* case substantial monetary damages were sought against individuals as a result of their conspiracy to deprive plaintiff and others of their civil rights. The defendants' conduct in the *Allmon* case, included, among other things, political payoffs, corruption, bribery, and violation of statutes.

Yet, despite the clear *in personam* nature of the *Allmon* case, Respondent Payne argues that the "thrust" of the *Allmon* case was to allegedly "wrest control" of the receivership estate and retry all of the issues using the civil rights statute as a "vehicle" for federal jurisdiction (Payne Brief, at p. 13). Such an assertion is untrue. But, in cases where a state court receivership proceeding is a sham and is fraught with political

and judicial corruption, and bribery, and violates substantial constitutional and civil rights of a party litigant, then, the only recourse that remains is to seek relief in our federal courts by the institution of a federal civil rights action and a claim for monetary damages!

III.

The Subject Civil Contempt Judgments Are Void and Unenforceable in That They Are Based Upon an Unconstitutional State Court Order.

Respondent Protective argues that Petitioner cannot escape liability for his civil contempt of the subject state court injunction, even if said injunction is unconstitutional and void. In support of its argument, Protective erroneously cites this Court's decision in *Walker v. Birmingham*, 388 U.S. 307 (1967). In *Walker* this Court held that in some circumstances a person may be held in *criminal* contempt for disobeying a judicial order that is subsequently found to be void.

Respondents' argument is easily disposed of by this Court's decision in the case of *United States v. United Mine Workers*, 330 U.S. 258 (1947). In the *United Mine Workers* case, this Court declared that a conviction and award of damages arising out of a *civil* contempt must be reversed if the *civil* contempt arises out of a judicial order subsequently found to be unconstitutional. In so ruling, this Court declared:

"It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order."

This Court continued by stating:

"The right to remedial relief falls with an injunction which events prove was erroneously issued (citations), and *a fortiori*, when the injunction or restraining order was beyond the jurisdiction of the court." (*Ibid.* 330 U.S. 258, at p. 259).

This Court set aside the civil contempt judgment in the *United Mine Workers* case as Petitioner requests this Court to do in the case at bench.

IV. Conclusion.

Petitioner recognizes the importance of preserving the dignity and respect of state courts and of their ability to enforce their orders and decrees. However, the power and authority given state courts to enforce their orders plainly was not intended to give a state court the power to nullify the United States Constitution by the simple process of incorporating an unconstitutional prohibition into its judicial decree.

The subject state court order of January 6, 1975, and the civil contempt judgments based thereon are constitutionally infirm, in that they restrain and punish an individual solely because he exercised his constitutionally protected right of seeking redress in the federal courts of the United States for deprivation of his constitutional and civil rights. For these important reasons Petitioner requests that certiorari be granted.

Respectfully submitted,

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